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(1)

CA 2006

IN THE HIGH COURT OF JUDICATURE AT CHATTISGARH
BILASPUR C.G.

S.A.NO.305/06

Single Bench

APPELLANTS/
PLAINTIFF

1.John Bilton S/O Late John Biliam aged 44 years.
2.Smt. Movil Bilton w/o John Bilton aged 42 years
Both r/o M.I.G.-1 502 HUDCO Amdinagar(Kausal Nagar)
Bhilai tah and Distt. Durg C.G.

VERSUS

RESPONDENTS/
DEFENDENTS.

1.John Britons/o John Biliam aged 37 yrs
2.Smt. suman wd/oJohn Biliamaged 63 years
Both r/o MIG-1 502 HUDCO AMDINAGAR (Kaushal Nagar)
3.John Klinton s/o John Biliam aged 42 years.r/o St.9 Block 9 Qr.No.6 Hospital Sector Bhilai Tah and distt. Durg C.G.
4.John Newton s/oJohn Biliam aged 40 years r/oQr.No.17 Block5 sector8 Bhilai Tah &Distt. Durg Bhilai C.G.

R.R.No. 18/05
Presented by Shri Awadhesh Singh
on 23-1-06

(5)

APPEAL UNDER SECTION 100 C.P.C. ARISING OUT OF JUDGEMENT AND DECEE DATED 20/11/04 PASSED BY SHRI LAKHAN SINGH FIRST ADDITIONAL DISTRICT JUDGE DURG IN CIVIL APPEAL NO. 6A/03 VALUED RS.600/-

XI-HC-78

(29)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक SA 305/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SECOND APPEAL NO. 305 OF 2006

John Bilton and another : Appellants

Vs.

John Briton and others : Respondents.

4.10.2006:

Shri Arjun Yadav counsel for the appellants.
Shri Akhil Agrawal panel lawyer for the respondent/State.

Heard on the question of admission and perused the material available on record.

The appellants have preferred this appeal under section 100 of the Code of Civil Procedure against the judgment and decree dated 20.11.2004 passed by the Additional District Judge Durg in Civil Appeal No. 6-A/2003 whereby the appeal preferred by the appellants against the judgment and decree dated 12.3.2003 passed by 8th Civil Judge Class II Durg in Civil Suit No. 79-A/2001 dismissing the suit of the appellants has been dismissed and the judgment and decree of the trial Court has been affirmed.

Briefly stated the case of the appellants/plaintiffs before the Trial Court was that they are son and daughter-in-law of respondent No.2 whereas respondents 3 and 4 are the sons of respondent No.2. The father of the appellant No.1 had purchased a house from HUDCO, however before he could occupy the house in question he died. It is

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आदेश पत्रक (पूर्वानुबद्ध)

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	further the case of the plaintiffs that they are occupying half portion of the suit house and the remaining portion is in possession of the respondents 1 and 2. The respondents are trying to evict the appellants and for that purpose they are creating nuisance. Since the house belonged to their father, the appellants have also got the equal share in the same. The house in question was allotted in the name of their father since he happened to be the employee of the Bhilai Steel Plant and after his death all of them are in possession of the same as per the mutual compromise Ex. P-1 and with these pleadings a relief of declaration that defendants 2 and 3 have no right to interfere with their possession over the suit house nor have they any right to evict them was prayed for. Relief of perpetual injunction to the effect that they be restrained from causing interference was also prayed for. Defendants 1 and 2 in their statements have stated that defendant No.2 is the employee of Bhilai Steel Plant and in fact she had purchased the suit house which was constructed by HUDCO in the year 1995 and she permitted the plaintiffs to reside with her. Plaintiffs were paying Rs. 300/- per month for a period of 2-3 months and thereafter, they stopped making payment and they are illegally occupying the suit house by practicing fraud. The written statement filed on behalf of the defendants 3 and 4 is to the effect that all the movable and immovable properties of their father stood partitioned during his lifetime amongst the sons and wife and since then they are residing separately. They denied the allegation of interference in the possession of the plaintiffs. On the basis of the pleadings of the respective parties issues were framed and after recording the statements of the witnesses on behalf of	

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the parties the suit was dismissed by the trial Court with a finding that the plaintiffs have failed to prove that the house in question belonged to their father though it was held that the defendants are residing in half portion of the suit house. It was further held that the plaintiffs have not been able to establish that the defendants are trying to evict the plaintiffs and accordingly, the suit was dismissed. The appeal preferred by the appellants/plaintiffs has been further dismissed with a finding that the accommodation in question still continues to be the property of Bhilai Steel Plant and as the same has not been transferred, the plaintiffs are not entitled for a relief of declaration on the ground of title of their father or mother and with this finding the relief of perpetual injunction has also been held to be correctly rejected by the trial Court and the appeal has been dismissed.

Learned counsel for the appellants submits that the findings of both the Courts below are perverse and contrary to the material available on record. He further submits that the Courts below have ignored this fact that even the defendants 3 and 4 have not disputed that the property in question is the property of their father and therefore, all the brothers had equal share in the said property. Document of Ex. P-1 being the agreement between the parties to the suit has not been considered solely on the ground that the witnesses to the said agreement have not been examined though the contents of the document are not disputed and the denial of the defendant/respondent No.2 with respect to her signature could be ascertained by comparison from her admitted signature and

आदेश पत्रक (पूर्वानुबद्ध)

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therefore, a substantial question of law mentioned below arises for adjudication of this appeal:

"1. Whether the courts have committed illegality in deciding the ownership of house in question?

2. Whether the appellants after partition of father's property i.e. house in question is entitled to reside therein?

3. Whether the findings are perverse?"

The Courts below have categorically recorded a finding that the plaintiffs have failed to prove that their father was the owner of the suit property. The above finding is based on the documents filed by both the parties and since the property still stands in the name of Bhilai Steel Plant, the findings of the Courts below that the declaratory decree in favour of the plaintiffs that they had a right to continue in possession of the property in question and further that they have right to declaration that respondents 1 and 2 do not have any right to evict them, has rightly been refused. Relief of perpetual injunction has also been declined on the ground that the plaintiffs have failed to establish that the defendants are trying to dispossess the plaintiffs from the suit accommodation.

The above finding is a finding of fact. Thus keeping in view that the Courts below by recording a concurrent finding that the plaintiffs have failed to prove the title of their father and further that the defendants are disturbing their possession over the suit house and dismissed the suit, no

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आदेश पत्रक (पूर्वानुबद्ध)

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	substantial question of law as proposed by the counsel for the appellants mentioned above arise for adjudication of this appeal. In the result, the appeal has no substance and therefore it is liable to be dismissed and it is accordingly dismissed at the admission stage itself. **Sd/-** **Dhirendra Mishra** **Judge**	

P.T.O.